IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Bail Appl..No. 4325 of 2007(K)

C.R.NO.40 OF 2007 OF SASTHAMCOTTA EXCISE RANGE

: PETITIONER/ACCUSED

KRISHNAN KUTTY, S/O KUTTAN,
AGED 38 YEARS, RESIDING AT AKHIL BHAVANAM,
KOTHAPURAM MURI, WEST KALLADA VILLAGE,
KUNNATHOOR TALUK, KOLLAM DISTRICT.

BY ADV. SRI. K.SIJU
SRI.S.SUDHEESHKAR
SRI.K.VINAYAKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, SASTHAMCOTTA EXCISE RANGE
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4325 of 2007

Dated this the 17th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The crux of the allegations against the petitioner is that the petitioner kept concealed to 450 litres of wash. The police party on reciept of discreet information proceeded to the spot. They found the contraband articles concealed. But shortly before the party reached the scene, the petitioner had allegedly gone away from the scene of the crime. On the spot enquiry confirmed the complicity of the petitioner. The seizure mahazar prepared shows the complicity of the petitioner. He is named as the accused in the occurrence report also. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The investigator before preparing the seizure mahazar is alleged to have conducted an improper enquiry to ascertain the complicity of the petitioner. There is no satisfactory data to indicate such complicity. In these circumstances, the petitioner may be granted anticipatory bail, submits the learned counsel for the petitioner.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that all available indications convincingly point to the complicity of the petitioner. A fair and just inference of the involvement of the petitioner is certainly possible on the basis of the materials presently available. The petitioner has to be interrogated. It would be inexpedient to permit the petitioner to arm himself with an order of anticipatory bail at this early stage of the proceedings. This is a fit case where the petitioner must co-operate with the investigation and appear before the Investigating Officer or the learned Magistrate and then seek regular bail. There is no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I find no reason to invoke the discretion under Section 438 Cr.P.C. The petitioner must co-operate with the investigator and appear either before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-